Decision # 93-001

ONTARIO HUMAN RIGHTS CODE
R.S.O. 1990. c. H.19

BOARD OF INQUIRY

BETWEEN:

SHEELAGH CONWAY

Complainant

- AND -

ONTARIO HUMAN RIGHTS COMMISSION

Commission

- AND -

ROMAN KOSLOWSKI

Respondent

DECISION

BOARD OF INQUIRY:	Ronald W. McInnes	
APPEARANCES:	Kaye Joachim and Brian Eyolfson	Counsel for the Ontario Human Rights Commission
	Sheelagh Conway	Complainant
	Joseph Dziama and Ted Konop	Representatives of the Respondent
DATES & PLACE OF HEARING:	November 18, December 10 and 31, 1992, January 14, 1993 Toronto, Ontario	

THE COMPLAINT

Sheelagh Conway is a single woman with two teenaged daughters. Roman Koslowski is an elderly man who owns a house at 39 Mountview Avenue, Toronto which he has been renting to tenants for approximately 20 years. In October, 1989 the house was advertised for rent. Ms. Conway viewed it and submitted an application to rent. Her application was refused and, shortly after, the property was rented to a married couple with three children.

Ms. Conway alleges that her application was refused because she was not a man and Mr. Koslowski did not believe that a woman would be able to properly maintain the property. Mr. Koslowski's position is that Ms. Conway had a dog which she insisted on keeping and bringing to the house and, also, that he felt that she was too small and frail to be able to adequately maintain the property.

A complaint was filed by Ms. Conway on December 19, 1989 on the basis of discrimination with respect to occupancy of accommodation because of sex contrary to section 2(1) of the *Human Rights Code*.

By letter dated October 19, 1992, I was appointed a board of inquiry to hear and decide the complaint.

THE HEARING

The hearing in this matter was held in Toronto on December 10, 1992. At the end of the day, I adjourned the hearing and requested counsel for the Commission to provide certain further submissions. Due to the interposition of the

Christmas holidays, I did not receive these until December 31, 1992. A copy was provided to a representative of the respondent who agreed with the submissions of the Commission by letter received January 14, 1993.

Commission Counsel appeared and participated in the hearing in the usual manner. Ms. Conway chose to take an active role as a party in the proceedings and presented considerable evidence on her own behalf.

For medical reasons, Mr. Koslowski could not be present. A doctor's report was submitted at the commencement of the hearing which satisfied me that his health was now such that he could not attend and that it could be harmful to his health to even question him by telephone. I was also satisfied that there was little likelihood that his health would improve and, in any case, there was no request for an adjournment for this purpose. The Commission introduced into evidence the Respondent Questionnaire which Mr. Koslowski had completed, apparently with the assistance of a solicitor, in April, 1990. It was agreed that this Questionnaire represented the evidence that Mr. Koslowski would have given had he been able to testify. Mr. Koslowski was not represented by a solicitor at the hearing. He was represented by his son-in-law, Ted Konop and a friend, Joseph Dziama.

Under all of the circumstances, considerable latitude was given to the Complainant and the representatives of the Respondent in the presentation of evidence. In addition, I permitted the Commission to call the evidence of one witness by speaker telephone. This was a lady who lived in Windsor and cared for a multiply handicapped child. Her evidence was brief and did not deal directly with the circumstances of the complaint. No objection was taken to utilization of this more convenient procedure.

COMPLAINANT'S EVIDENCE

In 1989, Ms. Conway and her two daughters were sharing accommodation with another single parent who had a 16 year old daughter. Rental for this accommodation was $1,000 per month. At this time, Ms. Conway was receiving social assistance and some child support from her ex-husband. At some point the landlady and her husband decided to move back into this house and Ms. Conway and her co-tenant moved to another house where the rent was $1,700 a month. They realized that this was beyond their means and hoped to find another person to share with them.

Although Ms. Conway got along well with the other single mother, she was becoming concerned about her daughter and the influence that she was having on Ms. Conway's daughters. She began to look for other accommodation where she would have more control over the premises and could remove her daughters from the influence of the daughter of her co-tenant.

The supply of rental housing in Toronto at this time was relatively scarce especially in the price range which Ms. Conway could afford. She hoped to find a house with sufficient room for her family and a room which could be rented out to a "quiet" student in order to help with the rent.

In early October, 1989 she noted an ad in the Toronto Star for a house in the High Park area. She telephoned the number given in the ad and apparently spoke to Mr. Koslowski. She was advised that the rent was $1,000 a month. This amount was considerably less than rents being asked for other houses in this part of

Toronto. Ms. Conway testified that Mr. Koslowski asked her, during this telephone discussion, whether she was married. Her evidence was not entirely clear but it appears that she avoided answering the question and asked if she could see the house. On October 17, 1989 she viewed it with Mr. Koslowski and Mr. Dziama. She felt that it was perfect for her needs.

She filled out an application form and noted that the form required her to indicate her marital status. She testified that she asked Mr. Koslowski about this and he stated that he wanted a man for the house who could mow the lawn, shovel snow and do repair jobs. Ms. Conway testified that she told him that she was strong enough to do this work and that she came from a rural community in the west of Ireland where women were expected to do heavy work and she was able to do it. Ms. Conway testified that, although she felt that Mr. Koslowski and Mr. Dziama were being sexist in the remarks that they were making, she did not make any comment at the time because she wanted the house so badly.

Ms. Conway testified that she felt that, at this point, Mr. Koslowski was just going through the motions and had decided against her. In order to enhance her credibility, she showed him a photograph of herself and her children. The photograph also showed a dog which Ms. Conway testified was "part of the family". Up to this point, nothing had been said about pets and the newspaper advertisement did not specify "no pets". However, Mr. Koslowski stated that he did not want a dog in the house. Ms. Conway's evidence was that she said that the dog had not been a problem in any other place that she had lived and that she would look after it. On cross-examination, Ms. Conway confirmed that what she meant by looking after the dog was making sure it did not mess up the house or the back yard. She did not

indicate that she advised Mr. Koslowski that she would make other arrangements for the dog.

In any event, Mr. Koslowski took her application and she asked if she could call him the next day after he had had an opportunity to check her references and credit rating. She testified that she did call him on the next day and that he stated that he would not rent the house to her because he wanted a man. He admitted to her that he had not checked her references or credit rating.

Following this refusal, Ms. Conway spent some time travelling through the area by bicycle putting up flyers which she had photocopied on utility poles and in shops and restaurants. She also advertised in local newspapers. She incurred expenses in doing this. She also testified that Mr. Koslowski's advertisement continued to appear in the Toronto Star.

Around the end of October, Ms. Conway was able to locate alternative accommodation at a rental of $1,050 per month. She moved in on November 11, 1989. However, by then, it was too late to find a university student to share the house. This loss was partially offset by the fact that the landlord reduced the rent by $50 per month until she could find someone to share it with her and also by the fact that she rented out the garage which was attached to the house.

She and her family remained in this house from November 11, 1989 to the end of January, 1992. During part of this time, she was able to share the house with someone else and her share of the rent during these times was $700.00. Apparently, she and her co-tenant each paid rent separately to the landlord. This was to avoid having sublet income attributed to her which would result in a reduction of the mother's allowance she was receiving.

One other point which arose during Ms. Conway's testimony related to a discussion with an officer with the Ontario Human Rights Commission sometime in 1991. Apparently, the officer was attempting to clarify the situation with respect to the dog and Ms. Conway told her that she thought she had told Mr. Koslowski that she could make arrangements for the dog if necessary. She advised the officer that she had made arrangements for someone to take the dog and gave the name of a woman. Ms. Conway admitted that she had never discussed arrangements with anyone because she did not feel that the dog was an issue. She attributed her statement to the Human Rights Officer as something said in the heat of the moment and long after the event. However, she compounded the problem at the time by speaking to this woman and asking her to corroborate this false story. Apparently, this woman agreed to "cover for her". However, when the Human Rights Officer contacted her, she denied that any discussion with respect to the dog had taken place between her and Ms. Conway.

Ms. Conway's explanation was that she was thinking of her good friend, Ms. Leather in Windsor when she spoke to the Human Rights Officer and inadvertently gave the wrong name. She testified that Ms. Leather had on several previous occasions offered to take the dog if it became a problem in Ms. Conway's quest for reasonable accommodation in Toronto. This was confirmed in the telephone testimony of Ms. Leather although she testified that there was no specific discussion related to the renting of the property from Mr. Koslowski.

Ms. Conway called as a witness Ms. Sylvia Novac as an expert in the area of women and housing issues. Ms. Novac described her area of specialization

as "feminist housing analysis". A number of her publications were introduced as exhibits.

The gist of her evidence was that there are two levels at which there is a housing disadvantage for women in Canada. She testified that there is systemic discrimination at the macro level which, combined with women's position in a segmented labour system and their lower incomes, results in a disadvantage within the competitive housing market. Two-thirds of female householders are renters while two-thirds of male householders are owners. 72% of single mothers in Canada are renters. At the micro level, or face to face discrimination level, studies indicate that a high percentage of female renters reported experiencing discrimination in attempting to rent accommodation.

With all respect to Ms. Conway and Ms. Novac, I did not find this evidence helpful in determining this complaint and do not intend to comment on it further. My function as a board of inquiry is to determine whether what occurred between Ms. Conway and Mr. Koslowski in October, 1989 constituted discrimination pursuant to the *Ontario Human Rights Code*. The government of Ontario has already recognized that discrimination occurs against women and that discrimination occurs in the provision of accommodation. This ground is recognized in the *Code* and is the basis of this complaint.

EVIDENCE OF THE RESPONDENT

Mr. Koslowski's evidence, as found in the Respondent Questionnaire, was that at the time he interviewed Ms. Conway, he had seven or eight other prospects for tenants for the house. He apparently had problems with the prior tenant not looking after the property adequately and, presumably, was concerned with finding a new tenant who would do so.

The Questionnaire states that Ms. Conway stated that she had a big dog and that Mr. Koslowski was adamant that he did not wish to have a dog in the house.

Mr. Koslowski also felt that Ms. Conway was a "small and frail" woman who would not be physically capable of maintaining the property to his standards. He felt that there was considerable work involved in maintaining the property and that this work is better done when there is a man in the family. As stated in the Questionnaire: "It came down to there being a number of applicants, and Mr. Koslowski chose a family without a pet, in which there were both a husband and wife."

The gist of Mr. Koslowski's evidence was that the presence of the dog was the determinative factor but that he also did not consider that a woman would be capable of properly maintaining the property.

Mr. Dziama testified at the hearing. He was present when Ms. Conway viewed the property. Although he did not hear all of the conversation between them, he generally confirmed that there were discussions with respect to the dog and that Mr. Koslowski told Ms. Conway that he was looking for a family with a

man whom he could depend on to see that the chores around the house would be done. Mr. Dziama emphasized that this house represented Mr. Koslowski's life savings and, apart from a small pension, the rent was his only income. Accordingly, it was very important to him that the property be well maintained. He was willing to accept less than market rent to obtain tenants who would meet his standards.

Mr. Dziama also produced a document which served as an offer to lease which he stated was the practice of Mr. Koslowski to provide to prospective tenants. This document contained the statement: "No pets are allowed". However, Mr. Dziama was unable to state whether or not a copy of this document was provided to Ms. Conway. In reply, Ms. Conway denied having seen it.

Mr. Dziama testified that the house was rented very shortly after it had been viewed by Ms. Conway on the basis of applications received by Mr. Koslowski. He estimated that there were twelve applicants. He stated that the ad continued to run in the Toronto Star because Mr. Koslowski forgot to cancel it until Mr. Dziama reminded him to do so.

Mr. Konop testified that Mr. Koslowski had always been adamant about not permitting a dog into the house. He recounted that in, in 1959, shortly after marrying Mr. Koslowski's daughter, he purchased a German Shepherd but that Mr. Koslowski would not permit it into the house. He had to send the dog to stay with his parents in Winnipeg until he and his wife were able to move into their own home.

Evidence was also given that Mr. Koslowski and his wife are both in their eighties and in very poor health. They require 24 hour a day care which must be paid for from the rent from 39 Mountview Avenue. Mr. Konop is a qualified

pharmacologist and described Mr. Koslowski as a debilitated man who was slowly losing his memory after congestive heart failure and further hospitalization for coronary artery disease. Both Mr. Konop and the doctor's report were not optimistic regarding Mr. Kowslowski's chances of survival in the event of a further recurrence.

ANALYSIS

It seems clear from all the evidence that Mr. Koslowski had two reasons for not accepting the application from Ms. Conway. He wanted a man who he felt would be more capable of doing household maintenance and repairs and he did not want a dog in the house. While the weight of these two factors was assessed differently by the Complainant and the Respondent, there is no doubt that both were important to Mr. Koslowski. My observations of Ms. Conway at the hearing do not permit me to accept the further reason put forward that she personally was too small and frail to do such work.

The law is clear that where there is more than one reason for a discriminatory action, only one of which is a prohibited ground, the presence of that reason is sufficient to create a breach of the *Code*. However, the reason must be a proximate element or operative factor in the refusal. As pointed out in Keene, *Human Rights in Ontario*, 2nd Edition at p. 352, numerous Ontario boards of inquiry have applied this rule. Typical comments were made in *O'Brien v Ontario Hydro* (1981), 2 C.H.R.R. D/504 (Ont. Bd. of Inquiry) where the board canvassed the Canadian and American law on age discrimination and said:

> "If one were to summarize the Canadian decisions on age discrimination, it could be fairly said that if a board of inquiry finds that a respondent allowed a complainant's age to influence whatsoever his or her treatment of the complainant, notwithstanding any other factors, then discrimination has, in fact, occurred.
>
> The essential issue, in considering the evidence in an inquiry such as this, is to determine whether "age" is or is not an operative factor by itself in the refusal to employ."

In my opinion, Ms. Conway's sex was an operative factor by itself in the refusal by Mr. Koslowski to consider her application for accommodation.

I have already stated that I do not accept the evidence that Ms. Conway was too small or too frail to perform the household maintenance. It was clear from the evidence that Mr. Koslowski had determined, before he ever saw Ms. Conway, that he would only rent to a family with a man in it. While Mr. Koslowski's age and ethnic background were described as the reasons for his having adopted these stereotypical assumptions, his refusal to consider Ms. Conway on her own merits was no less discriminatory.

As stated in Vizkelety ,*Proving Discrimination in Canada* at p. 135:

> "Where the refusal to hire, to rent, to provide public services, etc. is based upon generalized assumptions regarding the abilities or habits of members of certain protected groups, the refusal is said to be based on stereotypes and therefore discriminatory."

Accordingly, I find that Ms. Conway was discriminated against with respect to the occupancy of accommodation because of sex by Mr. Koslowski contrary to section 2(1) of the *Human Rights Code, 1981* S.O. 1981, c. 53 (now the *Human Rights Code* R.S.O. 1990, c. H.19)

REMEDIES

Section 41(1) of the *Code* provides:

> "(1) Where the board of inquiry, after a hearing, finds that a right of the complainant under Part I has been infringed and that the infringement is a contravention of section 9 by a party to the proceeding, the board may, by order,
>
> (a) direct the party to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this Act, both in respect of the complaint and in respect of future practices; and
>
> (b) direct the company to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding $10,000, for mental anguish."

Under human rights legislation, the purpose of compensation is to put the Complainant in the position she would have been in, as far as reasonably possible, had the discriminatory conduct not occurred There is an issue in this case as to what that position would have been.

In my view, this situation is analogous to those cases which deal with discrimination resulting in loss of employment opportunity as opposed to loss of employment. One example is *Onischak v. British Columbia* (1991), 13 C.H.R.R. D/87 (B.C. H.R.C.) where the B.C. Human Rights Council ruled that the Complainant had been discriminated against in a competition for employment with the Ministry of the Attorney General but declined to make an order compensating the Complainant

for lost wages because it found that he would not have been hired in any case because of poor references. A similar analysis can be found in a number of other cases including *Chapdelaine v. Air Canada* (1992), 15 C.H.R.R. D/22 (Can. Rev. Trib.) and *Dunmall v. Canada (Armed Forces)* (1992), 15 C.H.R.R. D/425 (Can. Trib.).

In the area of discrimination in respect to accommodation, the situation has been considered in *Blackburn v. Lam* (1990), 12 C.H.R.R. D/289 (Ont. Bd. Inq.). In that case, the board of inquiry found that the respondent discriminated against six male complainants when he expressed a preference for a mixed group of tenants (the M Group) including at least two women and declined to rent a house to the men. The complainants gave evidence that the respondent told them that "girls" were better at keeping the house clean. At the time, there was another equally qualified group of students (the B Group), which included female students, applying to rent the house. The board of inquiry stated:

> "Lam had good reason to do what he did, that is, to grant a least *[sic]* to the B Group on the house in question. I find that on January 26 he started to seek out a tenancy with the B Group for the reason that the M Group failed to keep its appointments. His error was to add a discriminatory component to what he was at liberty to do. That does not convert the loss to the M Group, which would have occurred in any event, into special damages."

The evidence of Mr. Koslowski was that he had seven or eight other prospective tenants for these premises. Mr. Dziama estimated the number of applicants at twelve. Mr. Koslowski was entitled to choose, on a non-discriminatory basis, from amongst these applicants. What then is the probability that he would have chosen Ms. Conway had the discriminatory considerations been erased entirely

from his mind? It is quite clear from the evidence that the probability would have been nil. Mr. Koslowski was adamant that he would not permit a dog in the house and nothing in the evidence of Ms. Conway indicates that she gave him any reason to believe that she would be prepared to move in without the dog. On cross-examination, Ms. Conway stated that, had she been advised by Mr. Koslowski in the initial telephone conversation that no pets were allowed, she would not have made an appointment to see the house. During the hearing, Ms. Conway appeared under the impression that Mr. Koslowski should have given her an opportunity to make a decision on the basis that she get rid of the dog but I do not find that there was any requirement that he do so. Apart from the requirements of human rights legislation, Mr. Koslowski was free to choose from amongst the applicants seeking to rent his house on whatever bases he wished.

Accordingly, I decline to make any award for special damages.

Different considerations apply to an assessment of general damages. Independent of actual monetary losses suffered by a complainant whose human rights are infringed, the very human right which has been contravened itself has intrinsic value. General damages are in the nature of restitution or compensation for the complainant's loss of dignity or self respect and not a penalty imposed on the respondent.

In her evidence, Ms. Conway stated that she was really upset and mad because she had been insulted by Mr. Koslowski refusing to consider her application. She referred to discrimination against women in employment and in the Roman Catholic Church and stated "all of these things kind of weighed heavily on my spirit". She made it clear that her search for suitable accommodation had been a

desperate one and that she had "pinned all my dreams" on being able to rent 39 Mountview Avenue.

It is clear from the testimony of Ms. Conway, as well as from the manner in which she sought to present her evidence and arguments in this case, that she is a strong feminist. She views this case in the context of the situation of a single parent and woman with a low income. The documentation introduced as exhibits and on argument indicates that Ms. Conway has devoted considerable time and energy to the study of discrimination against women in employment, accommodation and otherwise. Indeed, although it is not entirely clear from the evidence, it would appear that she was in the process of writing a book concerning discrimination against women in the Roman Catholic Church at the time of the application to rent the premises concerned in this complaint.

While there can be no doubt that Ms. Conway was hurt and angry that Mr. Koslowski would only accept a male tenant for the house, I cannot accept that this refusal had the profound effect on the various aspects of her life which she ascribes to it. Much of her evidence in this regard is speculative. No evidence was put before me from which I can conclude that she would have found the quiet student to share the rent or that her family life would have been significantly better had she been able to rent 39 Mountview Avenue rather than the house which she subsequently rented a few weeks later. In any event, I have already found that, even absent the discriminatory practice, she would not have been accepted as a tenant by Mr. Koslowski. It is my impression that Ms. Conway has pursued this complaint as much for philosophical reasons as for personal feelings of humiliation or loss of self respect. As she stated in her opening remarks, "my story incorporates events,

circumstances and repercussions, and must be located in the social political relations of women's poverty and what it means to be a single parent woman living in Canada at this particular moment in time."

Nevertheless, there is no doubt that the contravention of the *Code* by Mr. Koslowski did result in some injury to Ms. Conway's dignity and self respect together with the loss of her right to freedom from discrimination. Where contravention of the *Code* results in an injury of this nature, general damages for this loss should reflect the seriousness of the injury caused. This is clear from the case of *Cameron v Nel-Gor Castle Nursing Home* (1984), 5 C.H.R.R. D/2170 (Ont. Bd. Inq.) which was relied on by Counsel for the Commission.

Commission council made specific reference to the following paragraph in the *Cameron* decision:

> "A complainant may suffer greater injury and loss as a consequence of a contravention of the *Code* by virtue of the fact that such complainant is susceptible to suffer greater injury than a non-handicapped person, being viewed as a "thin-skulled" complainant. The respondent is liable for compensation which includes that necessary to compensate for the increased injury and loss suffered by the "thin-skulled" complainant."

In my view, Ms. Conway is anything but a "thin-skulled" complainant. Her resiliency, as shown by her own testimony, in dealing with single parenthood, unemployment and poverty in the midst of a housing crisis while at the same time producing two books and attaining two university degrees is commendable in the extreme. There is certainly no evidence of psychological trauma or shattering of self confidence as was suffered by Ms. Cameron in the above-noted case.

As mentioned above, at the end of the hearing, I requested further submissions from Commission Counsel. These submissions were on the issue of whether, in an award of compensation, it was relevant to take into consideration the medical and/or financial situation of the respondent. The cases on this point are not entirely consistent.

In *Shaw v. Levac Supply Ltd.* (1990), 14 C.H.R.R. D/36 (Ont. Bd. Inq.), the board stated that the object of human rights legislation is to effect restitution and the personal circumstances of the respondent is not a legitimate consideration for awarding less than is required to meet that objective. In *Peterson v. Anderson* (1991), 15 C.H.R.R. D/1 (Ont. Bd. Inq.), the board appears to have considered the "means of the respondents" in assessing the amount of the award of general damages. In *Parks v. Christian Horizons, (No. 2)*, (1992), 16 C.H.R.R. D/171 (Ont. Bd. Inq.), the board gave consideration to the limited funding sources of the respondent in deciding not to award the discretionary remedies of reinstatement and interest but did not do so when assessing special and general damages.

In any event, the Commission submits that there was insufficient evidence placed before the board to properly assess the financial position of the respondent. I think that I must accept this submission, especially since the representatives of the Respondent refused an offer to submit financial documentation on the Respondent at the end of the hearing.

In my view, an appropriate award of general damages in this case would be $1,000 and I so order. However, on the basis of the evidence which was presented, I exercise my discretion against awarding interest.

I have considered whether or not there should be an order directing the Respondent to comply with the *Code* in future or to submit to the Commission a rental application form consonant with the *Code* to be used exclusively hereafter. After giving consideration to the age and the evidence as to the physical and mental condition of the Respondent, I do not feel that such an order would advance the policy objectives of the *Code* in this situation.

DATED at Toronto, Ontario this 21st day of January, 1993.

Ronald W. McInnes